

Judge: Hon. Thomas W. Dore  
Chapter 13  
Location: Seattle  
Hearing Date: June 1, 2022  
Hearing Time: 9:30a.m.  
Response Date: May 25, 2022

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In Re:

## BEVERLY JANE CARY

## Debtor

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## BEVERLY JANE CARY,

Plaintiff,

V.

PATCH SERVICES, LLC d/b/a NOAH;  
PATCH HOMES, INC.; FIRST AMERICAN  
TITLE INSURANCE COMPANY LENDERS  
ADVANTAGE,

## Defendants.

Bankruptcy Case No. 20-12450 TWD

Adversary Case No. 22-01000-TWD

DEFENDANT FIRST AMERICAN  
TITLE INSURANCE COMPANY'S  
MOTION TO STRIKE PLAINTIFF'S  
SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Bankruptcy Procedure 7012 and Federal Rule of Civil Procedure 12(f), Defendant First American Title Insurance Company (erroneously sued as American Title Insurance Company, Lender's Advantage) ("FATIC") hereby submits the following Motion to Strike Plaintiff's Second Amended Complaint.

100047/002553/02633542-2

FIRST AMERICAN'S MOTION TO STRIKE  
SECOND AMENDED COMPLAINT-1

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2                   **I.           INTRODUCTION AND RELIEF REQUESTED**

3                   Plaintiff Beverly Jane Cary has filed the Second Amended Complaint without leave  
4 of the Court or consent of the parties. This filing violates FRBP 7015 and should be  
5 stricken as a procedurally improper nullity without legal effect. Based on the foregoing and  
6 as further set forth below, FATIC respectfully requests that the Court strike Plaintiff's  
7 Second Amended Complaint from the judicial record.

8                   **II.           FACTS**

9                   Plaintiff filed her original adversary complaint ("Complaint") on January 18, 2022.  
10 Dkt. at 1. Plaintiff filed a First Amended Adversary Complaint (the "FAC") on January 19,  
11 2022. Dkt. at 2. Then, without obtain leave of court, Plaintiff filed Second Amended  
12 Adversary Complaint (the "SAC") on March 4, 2022. Dkt. at 4. The SAC adds FATIC as a  
13 party asserting claims against FATIC for violations of the Escrow Agent Registration Act,  
14 RCW 18.44 *et seq.*, the Washington Consumer Protection Act, RCW 19.86 *et seq.*, and the  
15 federal Truth in Lending Act, 15 U.S.C. § 1601, *et seq.* Dkt. at 4, ¶¶ 3.23-3.28, 3.40-3.47.

16  
17                   There is nothing in the judicial record to support that Plaintiff was granted leave of  
18 the Court or obtained agreement of the parties to file the SAC.

19                   **III.           LEGAL ARGUMENT**

20                   Federal Rule of Bankruptcy Procedure 7015 provides that Federal Rule of Civil  
21 Procedure 15 applies in adversarial bankruptcy proceedings. Federal Rule of Civil  
22 Procedure 15(a)(1) permits a party just one opportunity to amend a pleading without leave  
23 of the Court. Once a party has amended once, leave of the court is required to amend again.  
24 FRCP 15(a)(2).

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FIRST AMERICAN'S MOTION TO STRIKE  
SECOND AMENDED COMPLAINT-2

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“If an amended pleading cannot be made as of right and is filed without leave of court or consent of the opposing party, the amended pleading is a nullity and without legal effect.” *Hardin v. Wal-Mart Stores, Inc.*, 813 F. Supp. 2d 1167, 1181 (E.D. Cal. 2011). Such a pleading may also be stricken under Rule 12(f). *Canady v. Erbe Elektromedizin GmbH*, 307 F. Supp. 2d 2, 7 (D.D.C. 2004).

Plaintiff amended her Complaint once as a matter of course and without leave of the Court by filing the FAC on July 19, 2022. Dkt. at 2. Plaintiff filed the SAC without leave of the Court and without consent of the parties. Accordingly, the Court should hold that the SAC is a nullity, has no legal effect, and order it stricken. By extension, the summons issued on the SAC (Dkt. at 6) is also invalid and must be quashed or vacated.

#### IV. CONCLUSION

Based on the foregoing, FATIC respectfully requests that the Court grant this Motion to Strike, strike Plaintiff's SAC from the judicial record, and quash or vacate the summons issued on the SAC (Dkt. at 6).

DATED this 2<sup>nd</sup> day of May 2022.

## LAGERLOF LLP

*s/ Robert A. Bailey*  
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FIRST AMERICAN'S MOTION TO STRIKE  
SECOND AMENDED COMPLAINT-3

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## DECLARATION OF SERVICE

I hereby declare under penalty of perjury of the laws of the State of Washington and the United States of America that on this 2<sup>nd</sup> day of May 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Western District of Washington using the CM/ECF system, which will provide notice to the following parties:

Melissa A. Huelsman, WSBA No. 30935 Law Offices of Melissa A. Huelsman, P.S. 705 2 <sup>nd</sup> Ave, Suite 606 Seattle, WA 98104 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email: <a href="mailto:mhuelsman@predatorylendinglaw.com">mhuelsman@predatorylendinglaw.com</a> <input checked="" type="checkbox"/> By CM/ECF E-Service
Mark McClure, WSBA No. 24393 Law Offices of Mark McClure, PS 1103 W. Meeker St., Suite 101 Kent, WA 98032 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email: <a href="mailto:mark@mcclurelawgroup.com">mark@mcclurelawgroup.com</a> <input checked="" type="checkbox"/> By CM/ECF E-Service
Christina L. Henry, WSBA No. 31273 Henry & Degraaff, PS 119 1 <sup>st</sup> Ave S., Suite 500 Seattle, WA 98104 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email: <a href="mailto:chenry@hdm-legal.com">chenry@hdm-legal.com</a> <input checked="" type="checkbox"/> By CM/ECF E-Service
Faye Rasch, WSBA No. 50491 Law Office of Faye C. Rasch 600 Stewart St., Suite 1300 Seattle, WA 98101 <i>Attorney for Defendant Patch Services LLC</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email: <a href="mailto:fraschlaw@gmail.com">fraschlaw@gmail.com</a> <input checked="" type="checkbox"/> By CM/ECF E-Service

DATED this 2<sup>nd</sup> day of May 2022 at Seattle, Washington.

*s/ Karrie L. Blevins*

Karrie L. Blevins, Paralegal  
Lagerlof LLP

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FIRST AMERICAN'S MOTION TO STRIKE  
SECOND AMENDED COMPLAINT-4

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